



Mia  
Wood/ENF/R8/USEPA/US  
07/28/2008 09:36 AM

To Mia Wood/ENF/R8/USEPA/US@EPA  
cc  
bcc  
Subject 7/28/06 gen. suppl poc



Richard  
Sisk/ENF/R8/USEPA/US  
04/08/2008 10:08 AM

To Kathryn Hernandez/EPR/R8/USEPA/US@EPA  
cc  
Subject Asarco POC

Kathy - Here is a copy of the Asarco Supplemental Proof of Claim that includes the claim for Richardson Flats. I think it is on about page 34.



#812942-v1-ASARCO\_POC\_{final}\_for\_response\_costs\_7\_31\_-\_pdf.pdf

UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF TEXAS		PROOF OF CLAIM																														
Name of Debtor <b>ASARCO, LLC</b>	Case Number <b>05-21207</b>																															
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.																																
Name of Creditor (The person or other entity to whom the debtor owes money or property): <b>United States of America on behalf of the U.S. Environmental Protection Agency, Dept. of Agriculture, Dept. of the Interior, and the International Boundary and Water Commission</b> Name and Address where notices should be sent: <b>David L. Dain</b> <b>United States Dept. of Justice/ENRD/EES</b> <b>P.O. BOX 7611-BEN FRANKLIN STATION</b> <b>Washington, DC 20044-7611</b> Telephone Number: <b>(202) 514-3644</b>	<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.																															
THIS SPACE IS FOR COURT USE ONLY																																
Account or other number by which creditor identifies debtor:	Check here if <input type="checkbox"/> replaces this claim <input type="checkbox"/> amends a previously filed claim, dated:																															
<b>1. Basis for Claim</b> <table style="width: 100%; font-size: small;"> <tr> <td><input type="checkbox"/> Contribution, Indemnity or Guaranty</td> <td><input type="checkbox"/> Goods Purchased</td> <td><input type="checkbox"/> Personal Injury / Wrongful Death</td> <td><input type="checkbox"/> Reclamation Notices</td> <td><input type="checkbox"/> Wages, salaries, and compensation (fill out below)</td> </tr> <tr> <td><input checked="" type="checkbox"/> Environmental</td> <td><input type="checkbox"/> Letters of Credit or Surety Bonds</td> <td><input type="checkbox"/> Officer Indemnity</td> <td><input type="checkbox"/> Refund</td> <td>Your SS#</td> </tr> <tr> <td><input type="checkbox"/> Equipment Financing</td> <td><input type="checkbox"/> Litigation</td> <td><input type="checkbox"/> Other</td> <td><input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a)</td> <td>Unpaid compensation for services performed from</td> </tr> <tr> <td><input type="checkbox"/> Contract</td> <td><input type="checkbox"/> Long Term Disability</td> <td><input type="checkbox"/> Other Financing</td> <td><input type="checkbox"/> Taxes</td> <td>to</td> </tr> <tr> <td><input type="checkbox"/> Expenses</td> <td><input type="checkbox"/> Mechanic's Liens</td> <td><input type="checkbox"/> Pension Insurance</td> <td><input type="checkbox"/> Trade Payables</td> <td><input type="checkbox"/> Collectively bargained obligations</td> </tr> <tr> <td><input type="checkbox"/> Goods sold</td> <td><input type="checkbox"/> Money Loaned</td> <td><input type="checkbox"/> Professional Fees</td> <td><input type="checkbox"/> Unknown</td> <td><input type="checkbox"/> Worker's Compensation</td> </tr> </table>			<input type="checkbox"/> Contribution, Indemnity or Guaranty	<input type="checkbox"/> Goods Purchased	<input type="checkbox"/> Personal Injury / Wrongful Death	<input type="checkbox"/> Reclamation Notices	<input type="checkbox"/> Wages, salaries, and compensation (fill out below)	<input checked="" type="checkbox"/> Environmental	<input type="checkbox"/> Letters of Credit or Surety Bonds	<input type="checkbox"/> Officer Indemnity	<input type="checkbox"/> Refund	Your SS#	<input type="checkbox"/> Equipment Financing	<input type="checkbox"/> Litigation	<input type="checkbox"/> Other	<input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a)	Unpaid compensation for services performed from	<input type="checkbox"/> Contract	<input type="checkbox"/> Long Term Disability	<input type="checkbox"/> Other Financing	<input type="checkbox"/> Taxes	to	<input type="checkbox"/> Expenses	<input type="checkbox"/> Mechanic's Liens	<input type="checkbox"/> Pension Insurance	<input type="checkbox"/> Trade Payables	<input type="checkbox"/> Collectively bargained obligations	<input type="checkbox"/> Goods sold	<input type="checkbox"/> Money Loaned	<input type="checkbox"/> Professional Fees	<input type="checkbox"/> Unknown	<input type="checkbox"/> Worker's Compensation
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<b>2. Date debt was incurred:</b> <u>See Attached</u>		<b>3. If court judgment, date obtained:</b> <u>See Attached</u>																														
<b>4. Total Amount of Claim at Time Case Filed:</b> \$ <u>See Attached</u> (unsecured) <u>See Attached</u> (secured) <u>See Attached</u> (priority) <u>See Attached</u> (Total)																																
If all or part of your claim is secured or entitled to priority, also complete Item 5 or 7 below. <input checked="" type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.																																
<b>5. Secured Claim.</b> <input checked="" type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff).  Brief Description of Collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input checked="" type="checkbox"/> Other <u>See Attached</u>  Value of Collateral: \$ <u>See Attached</u> Amount of arrearage and other charges at the time case filed included in secured claim, if any: \$	<b>7. Unsecured Priority Claim.</b> <input type="checkbox"/> Check this box if you have an unsecured priority claim Amount entitled to priority \$ Specify the priority of the claim: <input type="checkbox"/> Wages, salaries, or commissions (up to \$10,000), * earned within 180 days before the filing of the bankruptcy petition or cessation of the debtor's business, which ever is earlier - 11 U.S.C. § 507(a)(3). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Up to \$2,225* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6). <input type="checkbox"/> Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507 (a)( ).  <i>* Amounts are subject to adjustment on 4/1/07 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment. \$10,000 and 180-day limits apply to cases filed on or after 4/20/05. Pub. L. 109-8.</i>																															
<b>6. Unsecured Nonpriority Claim</b> \$ <u>See Attached</u> <input checked="" type="checkbox"/> Check this box if: a) there is no collateral or lien securing your claim, or b) your claim exceeds the value of the property securing it, or if c) none or only part of your claim is entitled to priority.		THIS SPACE IS FOR COURT USE ONLY																														
<b>8. Credits:</b> The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.																																
<b>9. Supporting Documents:</b> Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. <b>DO NOT SEND ORIGINAL DOCUMENTS.</b> If the documents are not available, explain. If the documents are voluminous, attach a summary.																																
<b>10. Date-Stamped Copy:</b> To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.																																
Date  <b>07/28/2006</b>	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any)  <b>David L. Dain</b> <b>Senior Attorney, U.S. Dept. of Justice/ENRD/EES</b>																															

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
(Corpus Christi Division)**

<b>In re</b>	<b>§</b>	<b>Case No. 05-21207</b>
	<b>§</b>	
<b>ASARCO, LLC, et al.</b>	<b>§</b>	<b>Chapter 11</b>
	<b>§</b>	
<b>Debtors</b>	<b>§</b>	<b>Jointly Administered</b>
	<b>§</b>	

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**SUPPLEMENTAL PROOF OF CLAIM OF THE UNITED STATES ON  
BEHALF OF THE UNITED STATES ENVIRONMENTAL PROTECTION  
AGENCY, THE DEPARTMENT OF AGRICULTURE, THE DEPARTMENT OF  
THE INTERIOR, AND THE UNITED STATES SECTION OF THE INTERNATIONAL  
BOUNDARY AND WATER COMMISSION, AGAINST ASARCO, LLC**

The United States files this Supplemental Proof of Claim at the request of the U.S. Environmental Protection Agency ("EPA"), the Forest Service of the United States Department of Agriculture ("USDA"), the Bureau of Indian Affairs of the United States Department of the Interior, and the United States Section of the International Boundary and Water Commission against debtor ASARCO, LLC ("ASARCO") for: (1) response costs incurred and to be incurred by the United States under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601-9675 at various sites as set forth herein and (2) for civil penalties as set forth herein. In addition, with respect to equitable remedies that are not within the Bankruptcy Code's definition of "claim," 11 U.S.C. § 101(5), this proof of claim is only filed in protective fashion.

On February 16, 2006 the United States Filed its Initial Proof of Claim (Secured) of the United States on Behalf of the United States Environmental Protection Agency, Department of Agriculture and Department of Interior ("U.S. Initial Proof of Claim"). All allegations contained therein are incorporated herein by reference. The United States is also separately filing: 1)

Supplemental Proof of Claim of the United States on Behalf of the United States Department of the Interior and the Department of Agriculture, Against ASARCO, LLC, and 2) Proof of Claim of United States of America on Behalf of the Department of the Interior and Certain Indian Landowners.

### **CERCLA LIABILITIES TO EPA**

1. ASARCO is liable to the United States under CERCLA with respect to each of the Sites set forth in paragraphs 2 - 60 below. Each of these Sites is a facility within the meaning of CERCLA. There have been releases or threats of releases of hazardous substances at each of the Sites. Response costs have been and will be incurred by EPA at each of the Sites not inconsistent with the National Contingency Plan ("NCP") promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, and set forth at 40 C.F.R. ¶ 300, as amended. ASARCO is liable to take response action under CERCLA at the Sites set forth below, but this Supplemental Proof of Claim is filed in protective fashion only with respect to such liabilities. See e.g., Paragraphs 3, 16, 18, 27-29, 34-38, 40, 45, 47-48, 54, 56, 59, 61, and 62 infra. ASARCO is also liable to reimburse the United States for the costs (plus interest due under 42 U.S.C. § 9607(a)) of actions taken or to be taken by the United States in response to releases and threatened release of hazardous substances at the Sites. Other potentially responsible parties may, along with ASARCO, also be jointly and severally liable to the United States under CERCLA with respect to some of the Sites.

#### **Bunker Hill Superfund Facility/Coeur d'Alene Basin.**

2. This site in northern Idaho was previously identified in the U.S. Initial Proof of Claim. All allegations contained therein are incorporated herein by reference.

Operable Unit Number 1 (the "Box"):

3. This Supplemental Proof of Claim is filed in a protective manner with respect to ASARCO's obligation to perform response action pursuant to the 1994 Consent Decree for Operable Unit 1 (the "Box") of the Bunker Hill Site in United States v. ASARCO, Inc., et al., No. 94-206-N-EJL (D. Idaho). See Paragraph 61 infra. On November 17, 1994, the United States District Court for the District of Idaho ordered Debtor and other parties to, inter alia, perform the removal and replacement from residential and commercial properties, street rights of way and public use areas in what is referred to as the "Populated Areas" of OU1 pursuant to the 1994 Consent Decree. Most of the work to be performed under this Decree has been completed.

4. In addition, the Consent Decree requires that ASARCO fund an institutional control program which has and will provide for the repair and maintenance of the selected remedy. EPA estimates that it will cost the jointly and severally liable parties, including ASARCO, \$27,540,000 to complete the remaining work and to fund the institutional control program under the Decree.

5. In the U.S. Initial Proof of Claim, the United States alleged ASARCO is also jointly and severally liable to the United States for \$13,359,140 for response costs incurred by the United States with respect to the Box through the dates set forth therein. The amount is hereby amended to be \$14,724,480, to reflect response costs incurred through July 17, 2006.

6. As a result of its relationship with Government Gulch Inc., ASARCO is an owner of a portion of the property subject to the work requirements of the Consent Decree. This area is generally referred to as Page Ponds. See Paragraphs 203-204 infra.

Operable Unit Number 3:

7. Operable Unit 3 (OU3) is more fully discussed in United States' Initial Proof of

Claim (Secured) ("U.S. Initial Proof of Claim"). In the U.S. Initial Proof of Claim, the United States limited its claim associated with OU3 of the Bunker Hill Site based on a decision in the United States District Court for the District of Idaho which ruled that the liability at OU3 was divisible and that ASARCO's apportioned share was 22%. Because the United States disagrees with that decision and has the right to appeal that decision, the United States is not making such a limitation on this Supplemental Proof of Claim.

8. As set forth in the U.S. Initial Proof of Claim, EPA has incurred, not inconsistent with the NCP, at least \$79,631,480 in response costs for OU3 of the Bunker Hill Site through July 31, 2005, and \$23,447,801 in enforcement costs which are CERCLA response costs through August 30, 2005. EPA hereby updates those figures and states that it has incurred at least \$104,540,302 in response costs for OU3 of the Bunker Hill Site (not including the enforcement costs identified above) through July 17, 2006. The amount of interest on these response costs due under 42 U.S.C. § 9607(a) through July 17, 2006 is \$9,307,771.

9. ASARCO is thus jointly and severally liable to the United States in the amount of \$127,988,103 plus interest due under 42 U.S.C. § 9607(a) in the amount of \$9,307,771, through July 17, 2006 for OU3.

10. In February of 1998, EPA initiated a Basin remedial investigation and feasibility study (RI/FS). The study area initially included the South Fork and its tributaries, the North Fork, the main stem of the Coeur d'Alene River, Lake Coeur d'Alene and the Spokane River, as well as those areas to which people had moved mining related wastes. For risks posed to ecological receptors, EPA evaluated six comprehensive approaches to address contamination in the Basin. At that time, EPA identified Alternative 3, as its "Preferred Alternative." This Preferred Alternative presents all parties notice of the nature and extent of the remediation that

may be called for in order to complete the full remediation of the Basin. However, when EPA issued its initial Record of Decision for Operable Unit 3, EPA selected an interim and non-final remedial action which it estimated would cost \$362,000,000. The selected interim remedy for OU3 includes the complete remedy for protection of human health in the communities and residential areas, including identified recreational areas, of the Upper Basin (the area east of the Box) and Lower Basin (the area between the Box and Lake Coeur d'Alene. However, with regard to ecological protection, the selected interim remedy includes thirty years of prioritized actions in the Upper and Lower Basin, and the complete remedy for ecological protection in the Spokane River between Upriver Dam and the Washington/Idaho state border. The selected interim remedy also provides a complete remedy for human health upstream of Upriver Dam in the Spokane River. The selected interim remedy does not include remedial action to address contamination in Lake Coeur d'Alene.

11. EPA estimates that additional response action under the Interim ROD for OU3 for which ASARCO is jointly and severally liable will cost \$326,000,000. This reflects the total ROD estimate of \$362,000,000 minus: (1) \$14,000,000 for remedial work at mining-related properties which neither ASARCO nor Hecla owned nor operated and (2) approximately \$22,000,000 already spent by EPA implementing the work identified in the OU3 ROD.

12. In addition, ASARCO recently completed an Engineering Evaluation/Cost Analysis ("EE/CA") for the Gem Portal which is within the area covered by OU3. The EE/CA evaluated the alternatives removal actions to address the acid mine drainage that flows from the Gem Portal to Canyon Creek. Because EPA has not yet selected a removal action to address the contaminated acid mine drainage that drains from the Gem Portal the cost of EPA's future response actions is uncertain. However, EPA estimates that the additional work at the Gem

Portal will cost \$9,946,175. This work is in addition to the work called for in the OU3 ROD. This estimate is based upon the construction and operation of a lime based active treatment system. EPA has incurred approximately \$6,907 in response costs overseeing the ASARCO's performance of the EE/CA. The amount of interest on these response costs due under 42 U.S.C. § 9607(a) through July 17, 2006 is \$1,450. ASARCO is jointly and severally liable for all these costs.

13. In addition, ASARCO is also jointly and severally liable for additional response action under a Final ROD for OU3. As noted, the RI/FS identified some, but not necessarily all, of the significant additional work that may be required in a final record of decision. However, the cost of such liability is presently undetermined and this claim is therefore filed as a contingent unliquidated claim for such liability.

14. The United States has previously filed in the bankruptcy its Motion for Declaration of the Inapplicability of the Automatic Stay, which seeks a declaration that the United States District Court for the District of Idaho may fix the amount of certain of ASARCO's liabilities for the Bunker Hill Site in accordance with the police and regulatory exception to the automatic stay. This proof of claim is filed without prejudicing the United States' contention in that motion.

15. As a result of its relationship with Government Gulch Inc., ASARCO is the current owner of portions of the Site subject to OU3, including the Mission Flats portions of the Bunker Hill Site. See Paragraphs 203-204 *infra*.

16. ASARCO may also be ordered by a court or other authority found to have jurisdiction to perform remedial response action with respect to the Bunker Hill Site. This Supplemental Proof of Claim is filed in a protective manner with respect to any such obligations



of ASARCO. See Paragraph 61 *infra*.

**California Gulch Superfund Site/Arkansas River Basin.**

17. This Site in and around Leadville, Colorado and the Arkansas River was previously identified in the U.S. Initial Proof of Claim. The allegations contained therein are incorporated herein by reference. This Supplemental Proof of Claim includes a protective filing with regard to ASARCO's on-going obligations to comply with clean-up orders at the Site as set forth in paragraph 18 *infra*, and a protective and secured claim related to the implementation of the Lake County Community Health Program as set forth in paragraphs 19 and 20 *infra*. It also updates the claim for reimbursement of past costs included in the U.S. Initial Proof of Claim.

18. This Supplemental Proof of Claim is filed in a protective manner with respect to ASARCO's performance of response actions pursuant to: (1) EPA's Unilateral Administrative Order CERCLA VIII-89-20 (issued on March 29, 1989 and which was amended on April 30, 1993 and on June 15, 1993) for OUI (Yak Tunnel) of this Site; (2) the 1994 Leadville Consent Decree in Civil Action No. 86-C-1675 (consolidated with Civil Action No. 83-C-2388) in the United States District Court for the District of Colorado, which addresses Operable Units 5, 7, and 9 of this Site; and (3) any order by a court or other authority found to have jurisdiction with respect to Operable Units 11 (Arkansas River flood plain) and 12 (site-wide surface and ground water quality) of this Site. See Paragraph 61, *infra*.

a. The response action addressing the Yak Tunnel and the basis for EPA's Unilateral Administrative Order CERCLA VIII-89-20 are set forth in Paragraph 26 of the U.S. Initial Proof of Claim. EPA estimates that it will cost the jointly and severally liable parties, including ASARCO, approximately \$750,000 per year to operate and maintain the water treatment plant and other components of the remedy to manage and treat the discharge from the

Yak Tunnel. In addition EPA estimates that should the Yak Tunnel collapse or fail that between \$20-\$30 million would be needed to address possible threats of blow-outs of the tunnel or a change in the hydrology of the area now drained by the Yak Tunnel.

b. As set forth in the U.S. Initial Proof of Claim at Paragraph 27, ASARCO is solely obligated pursuant to the 1994 Leadville Decree to perform the response actions at OUs 5, 7, & 9 of the Site. The response action for OU5 includes the cleanup of historic smelter sites and facilities, with associated hazardous materials consolidated and capped in an onsite repository. The response action for OU7 addresses the seeps and associated metals loading from the Apache Tailings Impoundment to the California Gulch drainage. The OU9 response action addresses the risk of children in residential areas of Leadville being exposed to lead from contaminated soils and other sources and is now being implemented by the so-called Lake County Community Health Program ("LCCHP"). EPA estimates that it will cost ASARCO the following amounts to comply with the 1994 Leadville Decree in order to complete the performance of the response actions for OUs 5, 7, and 9 as follows: (1) as to OU 5 approximately \$1 million plus \$20,000 per year for O&M costs; (2) as to OU 7 \$10,000 - \$30,000 per year for O&M costs; and (3) as to OU9 between \$600,000 and \$3 million.

c. The 1994 Leadville Decree did not resolve, but rather reserved, claims associated with OUs 11 and 12 at the Site. The response action for OU11 will address the area of contamination in the 500-year flood-plain of the Upper Arkansas River at its confluence with the California Gulch drainage and meadows irrigated with California Gulch water which have been impacted by the acid mine drainage and other discharges from the Yak Tunnel and the discharge or erosion of tailings or mine waste containing hazardous substances from within the Site. EPA estimates that it will cost \$5.2 million to perform the response action for OU11. The

response action for OU12 will address site-wide surface and ground water quality, and specifically any remaining contamination at levels of concern following source remediation within the areas of responsibility established by the 1994 Leadville Decree. EPA estimates that it will cost between \$12 and \$15 million for response actions for OU12. ASARCO is jointly and severally liable for the response actions and response costs associated with OUs 11 and 12.

19. Under the terms of the 1994 Leadville Consent Decree, ASARCO set up a mechanism to fund the implementation of the LCCHP, which provides for remediation and related work such as educational programs, site assessments, blood lead sampling and analysis, and program overhead. ASARCO funded a trust account in the amount of \$8.6 million to cover the cost of the LCCHP (the "LCCHP Trust") which was created when ASARCO, EPA, the Colorado Department of Public Health and Environmental ("CDPHE"), Lake County, Colorado, and Wells Fargo Bank West, N.A ("Bank"), entered into the Lake County Community Health Program Trust Agreement, effective August 15, 2001 (the "LCCHP Trust Agreement"). The United States asserts that the LCCHP Trust is not property of the bankruptcy estate, and may be used only in accordance with the purpose for which such funds were set aside. Nevertheless, should it ever be determined that the LCCHP Trust is property of the estate, then the United States asserts that the LCCHP Trust is not available to general creditors, but rather is subject to a constructive or equitable or other form of trust, and the United States asserts a secured claim to and against such proceeds. The United States reserves all rights to take appropriate action to establish the status of such trust interest.

20. The LCCHP Trust Agreement provides for ASARCO to each year submit a written budget for the approval of EPA for the response actions to be completed by ASARCO as part of the LCCHP for the following budget year, which runs from May 1 until April 30. The

funding is subject to a year-end accounting by ASARCO, subject to EPA's review and approval, of the actual income realized and expenditures incurred during the previous budget year. Prior to its bankruptcy filing, ASARCO proposed a budget for response action activities under the LCCHP, for the period from May 2005 through April 2006, which EPA approved in the amount of \$963,639.00. As of the date of ASARCO's bankruptcy filing, approximately \$868,000 of this amount was retained by ASARCO in a segregated bank account for the implementation of the EPA-approved LCCHP activities. The United States asserts that these funds are not available to general creditors, but are subject to a constructive or equitable or other form of trust and a secured claim is asserted to such proceeds. The United States reserve all rights to take appropriate action to establish the status of such trust interest.

21. In its Initial Proof of Claim the United States set forth a claim for oversight costs plus interest ASARCO is obligated to pay under the 1994 Leadville Decree with regard to OUs 5, 7, and 9 in the amount of \$809,791, and also set forth a claim in the amount of \$8,386,980, which does not include interest, for costs incurred by EPA for OUs 1, 11, and 12. EPA has since updated the OUs 1, 11, and 12 cost figures. EPA incurred a total of \$1,496,586 for oversight and other response costs associated with OU 1 from February 2, 1991 to December 31, 2005; EPA incurred a total of \$5,930,866 for response costs associated with OU 11 from February 2, 1991 to December 31, 2005; and EPA incurred a total of \$1,463,321 for response costs associated with OU 12 from February 2, 1991 to December 31, 2005. The updated total for OUs 1, 11, and 12 is \$8,890,774. ASARCO is thus jointly and severally liable to the United States in the amount of \$9,700,565 (plus interest due under 42 U.S.C. § 9607(a)) for such past response costs.

22. EPA has also continued to incur and will continue to incur response costs at the

Site, not inconsistent with the NCP and for which ASARCO is jointly and severally liable, for the matters described in Paragraphs 28 and 29 of the U.S. Initial Proof of Claim.

23. ASARCO is the current owner of portions of this Site individually and/or as a joint venture partner of the Res-ASARCO Joint Venture. See Paragraphs 203 - 204 *infra*.

**Commencement Bay Nearshore Tidelands Superfund Site**

24. The Commencement Bay Nearshore Tidelands Superfund Site in and around Tacoma and Ruston, Washington, consists of at least seven operable units. Four of those operable units relate to the former ASARCO smelter facility located along the Commencement Bay shoreline in Tacoma and Ruston, Washington. Of these four operable units, the three that still require remedial work are: (1) Operable Unit 02: the ASARCO Tacoma Smelter property and the adjacent Slag Peninsula (ASARCO Smelter Site); (2) Operable Unit 06: the ASARCO Offshore Sediments and Yacht Basin (the Sediments Site); and (3) Operable Unit 04: the Ruston North Tacoma Study Area (Ruston Yards).

25. ASARCO is liable to the United States under Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), with respect to the Site because (a) it is the owner of a portion of the Site, and (b) was the owner of a portion of the Site at the time of disposal of hazardous substances.

26. EPA estimates that it has incurred unreimbursed costs, not inconsistent with the NCP, at this Site through December 2005 of at least \$1,700,000 for which ASARCO is jointly and severally liable.

27. This Supplemental Proof of Claim is filed in a protective manner with respect to ASARCO's obligation to perform response action for OU2 pursuant to a Consent Decree entered by the United States District Court for the Western District of Washington on January 3, 1997 in United States v ASARCO, Inc., Civil Action No. 91-5528 B ("1997 Tacoma Decree"). See

Paragraph 61 infra. Substantial work has been performed pursuant to this Consent Decree. EPA estimates that it will cost ASARCO \$25,000,000 to perform the remaining response action work. The work required under the Consent Decree includes, inter alia., excavation of source area soils and slag and demolition debris designated as hazardous substances in an on-site containment facility, capping of the Site and other protective measures.

28. This Supplemental Proof of Claim is also filed in a protective manner with respect to ASARCO's obligation to perform response action for OU4 pursuant to a Consent Decree entered by the United States District Court for the Western District of Washington in May 1995 in United States v ASARCO, No 94-5714 RJB. See Paragraph 61 infra. On May 2, 1995, the United States District Court for the Western District of Washington ordered Debtor to perform the clean-up of the residential yards and public spaces near or adjacent to the Tacoma Smelter Site pursuant to the Consent Decree. Substantial work has been performed pursuant to this Consent Decree. The selected remedy for OU4 involves removal of contaminated soils from residential yards and public spaces in Ruston and Tacoma. Assuming that ASARCO performs all the work called for in the 2006 Annual Budget of the ASARCO Environmental Trust, EPA estimates that it will cost ASARCO between \$4,000,000 and \$8,000,000 to perform the remaining response action work for this OU.

29. This Supplemental Proof of Claim is also filed in a protective manner with respect to ASARCO's obligation to perform response action for OU6 pursuant to a unilateral administrative order issued to ASARCO in 2002 (In the Matter of Commencement Bay Nearshore/Tideflats Superfund Site ASARCO Sediments/Groundwater, ASARCO Inc. Respondent, EPA Docket No. 10-2002-0046) to perform the clean-up called for in the Record of Decision. See Paragraph 61 infra. The selected remedy for OU6 includes, inter alia., capping

the offshore sediments, dredging portions of the Yacht Basin and north shore area, and long term monitoring and institutional controls for groundwater. ASARCO has performed some of the work required but has not started remedial action on the sediments. EPA estimates that it will cost ASARCO \$20,000,000 to perform the remaining response action work for this OU.

30. The United States, ASARCO and a third party, Point Ruston, LLC, have recently entered into a Second Amendment to the 1997 Tacoma Decree. These parties have also entered into a Lien Resolution Agreement. These matters are pending before the respective courts. Should the agreements be entered ASARCO's responsibilities at OU2 and OU6 will be reduced should Point Ruston perform as required under these agreements.

31. ASARCO is the current owner of portions of this Site. See Paragraphs 203 - 204 infra.

32. The United States has a lien with respect to this Site. See Paragraph 205 infra.

**East Helena Superfund Site**

33. This site in Lewis & Clark County, Montana, was previously identified in the U.S. Initial Proof of Claim. All allegations contained therein are incorporated herein by reference. In that Initial Proof of Claim the United States set forth a claim in the amount of \$1,562,494 for response costs incurred through November 30, 2005, plus interest through January 12, 2006. EPA now estimates that it has incurred response costs of at least \$1,712,317 at the Site, not inconsistent with the NCP, through May 31, 2006 (plus interest through May 31, 2006 due under 42 U.S.C. § 9607(a) of \$93,455.) ASARCO is thus jointly and severally liable to the United States in the amount of \$1,802,494.

34. This Supplemental Proof of Claim is filed in a protective manner with respect to ASARCO's obligation to perform response action pursuant to (1) the RCRA Consent Decree in

United States v. ASARCO, No. 98-3-H-CCL (D. MT); (2) AOC 89-10 (as discussed in the U.S. Initial Proof of Claim) (3) AOC 91-17 (as discussed in U.S. Initial Proof of Claim), and (4) CERCLA Consent Decree United States v. ASARCO, Inc., No. 90-46-H-CCL (D. MT). See Paragraphs 61 - 62 infra.

35. On December 27, 1990, the United States District Court for the District of Montana ordered Debtor to, inter alia, implement EPA's 1989 Record of Decision pursuant to a Consent Decree in United States v ASARCO (D. MT) CV 90-46-H-CCL. This decision addressed Process Fluids Operable Unit (OU1), including subunits for Thornock Lake, Lower Lake, an acid plant waste treatment facility, and a speiss granulating pit and pond, all of which are on the smelter site itself. Work on all of the subunits has been completed except for remediation of Lower Lake, and activity at that location is currently governed by the RCRA consent decree.

36. Pursuant to AOC 89-10, EPA ordered Debtor to inter alia, perform site investigations and a feasibility study. Debtor has not completed this work.

37. Pursuant to AOC 91-17, EPA ordered Debtor inter alia, to clean up certain residences and yards. Debtor has not completed this work.

38. On May 5, 1998, the United States District Court for the District of Montana ordered Debtor to, inter alia, conduct investigations and appropriate clean up activities (together commonly known as a RCRA "corrective action") on property owned by Debtor, and where Debtor operated its lead smelting and other operations. Debtor is required to adequately identify the nature and extent of all hazardous constituents in the soil and groundwater (primarily metals such as arsenic and lead), and the directions the contamination is moving. Debtor is then required to study legitimate alternatives for both short and long term clean up activities and to



implement both short and long term clean up activities after EPA approval. At present, and with EPA approval, Debtor is developing and will implement a remedy for a very large source of arsenic in groundwater, commonly known as the speiss area. Debtor also plans develop a relatively new type of "barrier wall" system to halt the migration of what is presently understood to be a very large component of the contaminated groundwater, into the community. In addition, after completing of as-yet undetermined corrective action activities at a portion of the facility, Debtor is obligated to conduct a specific project (referred to as the supplemental environmental project) to restore the quality of habitat at that portion of the facility.

39. ASARCO is also obligated to fund the Lead Education and Abatement Program pursuant to AOC 91-17. EPA estimates the cost of that program for which ASARCO is jointly and severally liable to the United States to be \$150,000 per year for each of the next ten years.

40. ASARCO is also jointly and severally liable under CERCLA for the following: (1) EPA estimates that, following completion of the work scheduled to be conducted in 2006 pursuant to the 2006 Annual Budget of the ASARCO Environmental Trust, there will be 110 yards that qualify for clean-up under the current cleanup protocols. The cost of such cleanups is estimated to be \$4,300,000; (2) EPA and the State of Montana are presently trying to determine whether cleanup levels should be set at a more stringent level. If that occurs the costs could increase significantly however, a decision regarding such properties has not yet been made and the cost of such cleanup is presently undetermined and this claim is therefore filed as a contingent unliquidated claim for such liability; and (3) There are several hundred additional acres that do not contain residential properties that are contaminated and may require cleanup in order to be developed. A decision regarding such properties has not yet been made and the cost of such cleanup is presently undetermined. This claim is therefore filed as a contingent

unliquidated claim for such liability.

41. The above cost estimates assume that ASARCO shall perform the required response actions. If EPA is required to perform such response actions it will incur costs - including its indirect costs - significantly in excess of those estimated above.

42. ASARCO is the current owner of portions of this Site. See Paragraphs 203 - 204 *infra*.

43. The United States has a lien with respect to this Site. See Paragraph 205 *infra*.  
**El Paso County Metal Survey Site**

44. This site in El Paso County, Texas was previously identified in the U.S. Initial Proof of Claim. All allegations contained therein are incorporated herein by reference. In that Initial Proof of Claim the United States set forth a claim in the amount of \$17,701,074 for costs plus interest incurred through October 31, 2005.

45. This Supplemental Proof of Claim is filed in a protective manner with respect to ASARCO's obligation to perform response action pursuant to Administrative Order: In the Matter of El Paso County Metals Survey Site - ASARCO Inc. Respondent, Docket No. 6-8-05. In that administrative order EPA ordered Debtor to inter alia, to perform work associated with residential yard cleanups. EPA estimates that it will cost Debtor \$8,700,000 to perform the remaining yard cleanups.

**Encycle Site**

46. ASARCO is liable to the United States under the Resource Conservation and Recovery Act, as amended, ("RCRA"), 42 U.S.C. § 6901 *et seq.*, and under an administrative order on consent and a consent decree with respect to the facility located at 5500 Up River Road, Corpus Christi, Texas.

47. This Proof of Claim is filed in a protective manner with respect to ASARCO's obligations to perform closure of certain solid waste units at the facility at the conclusion of operations, and to perform specific corrective action at the facility. See Paragraph 61 and 62 infra. In October 1999, the United States District Court for the Southern District of Texas entered a Consent Decree and ordered Debtor, inter alia, to operate its facility in accordance with RCRA, to take corrective action measures at the facility, to implement a plan for closure of the RCRA facilities at the plant, and to perform two supplemental environmental projects ("Projects"). On August 13, 2004, the United States District Court for the Southern District of Texas entered a Stipulation and Order Modifying Consent Decree ("Stipulation"), and ordered ASARCO and another party to comply with fixed deadlines for RCRA closure and corrective action at the Encycle facility. As part of the Stipulation, ASARCO committed to completing closure in accordance with the closure plan by.

48. For protective purpose, the United States also alleges that to the extent that the Consent Decree or Stipulation does not require all cleanup required by RCRA or CERCLA at the Encycle Site, ASARCO is liable for the performance of all such work as the former owner/operator, or as a person who arranged for the disposal of hazardous substances at the Site, and/or due to its relationship with its subsidiaries.

**Omaha Lead Smelter Superfund Site**

49. This site in Omaha, Nebraska was previously identified in the U.S. Initial Proof of Claim. All allegations contained therein are incorporated herein by reference. In the Initial Proof of Claim the United States asserted a claim for unreimbursed past costs as of December 10, 2005 of, at least \$47,521,298.17 (excluding interest).

50. EPA has, through June 27, 2006, incurred unreimbursed response costs, not

inconsistent with the NCP, of, at least, \$59,044,026. EPA also estimates its interest on all costs incurred, through June 27, 2006, to be \$2,357,695.

51. ASARCO is jointly and severally liable to the United States in the amount of \$61,401,721 (plus additional interest due under 42 U.S.C. § 9607(a)) for such past response costs and interest.

52. EPA shall also continue to incur substantial costs at this Site implementing the interim ROD. EPA estimates that it will incur \$45,000,000 in costs in completing the Interim Remedy.

53. Moreover, EPA estimates that it will cost the jointly and severally liable parties, including ASARCO, \$5,000,000 to perform the remedial investigations and feasibility study necessary to select a final Record of Decision at the Site.

54. EPA estimates that it will cost the jointly and severally liable parties, including ASARCO, \$50,000,000 - \$150,000,000 to implement a final Record of Decision at the Site.

55. ASARCO is jointly and severally liable to the United States for this Site in the total amount of between \$161,410,711 - \$261,410,711 (plus additional interest due under 42 U.S.C. § 9607(a)).

56. ASARCO may also be ordered by a court or other authority found to have jurisdiction to perform remedial response action with respect to this Site. This Supplemental Proof of Claim is filed in a protective manner with respect to any such obligations of ASARCO. See Paragraph 61 *infra*.

**Murray Smelter Site**

57. The Murray Smelter Site in Murray, Utah, comprises two areas, the former operational areas of the Murray Smelter and adjacent Germania Smelter (the "on-facility"

portion of the site) and surrounding residential and commercial areas impacted by smelter stack emissions (the "off-facility" portion of the site).

58. ASARCO is jointly and severally liable under Section 107(a)(2) of CERCLA, 42 U.S.C. 9607(a)(2), because ASARCO and its corporate predecessors are former owner/operators of the Site at the time of disposal of hazardous substances.

59. This Supplemental Proof of Claim is filed in a protective manner with respect to ASARCO's obligation to perform response action pursuant to a 1998 Consent Decree in United States v. ASARCO, Inc., et al., No. 2:98CV0415B (D. Utah). See Paragraph 61 infra. In this Decree, the United States District Court for the District of Utah ordered Debtor and other parties, inter alia, to perform the remediation at the Site, pay certain costs, implement institutional controls and perform the long term operations and maintenance work pursuant to the Consent Decree. ASARCO has completed the remedial construction and is currently required to submit quarterly monitoring and annual reporting that includes specific statistical analyses of ground water monitoring data until performance standards are achieved. EPA estimates that it will cost ASARCO \$50,000 per year for ground water monitoring and \$75,000 per year for institutional controls to perform the remaining response action. If the standards are not achieved, ASARCO must also implement the contingency aspects of the Record of Decision issued for this Site. EPA estimates that it will incur oversight costs of \$15,000 per year as long as groundwater monitoring is in progress. The Consent Decree also requires ASARCO to perform a contingency remedy if levels of arsenic in ground water do not sufficiently decrease over time. However, the cost of this contingent liability is presently undetermined and this claim is therefore filed as a contingent unliquidated claim for such liability.

60. As of January 2006, ASARCO is liable to EPA for past costs in the amount of

\$46,998.64 plus interest for unreimbursed response costs, not inconsistent with the NCP, in accordance with the terms of the 1998 Consent Decree.

### **PROTECTIVE FILING FOR INJUNCTIVE/WORK OBLIGATIONS**

61. The United States is not required to file a proof of claim with respect to ASARCO's injunctive obligations to comply with work requirements arising under orders of courts, administrative orders, and other environmental regulatory requirements imposed by law that are not claims under 11 U.S.C. § 101(5). See, e.g., Paragraphs 3, 16, 18, 27-27, 34-38, 40, 45, 47-48, 54, 56, 59 supra and paragraphs 62, 68, 72-79, 179-181, 190-193 infra. See also, e.g., United States v. Atlantic Richfield, et al., CV 02-35-Bu-RFC, (D. Mont.) entered August 2002 and United States and Texas v. Encycle/Texas and ASARCO, No H-99-1136 (D. Tex.). ASARCO and any reorganized debtor(s) must comply with such mandatory injunctive and regulatory and compliance requirements. The United States reserves the right to take future actions to enforce any such obligations of ASARCO. While the United States believes that its position will be upheld by the Court, the United States has filed this proof of claim only in protective fashion with respect to such obligations and requirements as indicated herein to protect against the possibility that ASARCO will contend that it does not need to comply with any such obligations and requirements and the Court finds that it is not required to do so. Therefore, a protective contingent claim is filed in the alternative for such obligations and requirements but only in the event that the Court finds that such obligations and requirements are dischargeable claims under 11 U.S.C. § 101(5) rather than obligations and requirements that ASARCO, as a debtor-in-possession and as reorganized, must comply with. Nothing in this Proof of Claim constitutes a waiver of any rights of the United States or an election of remedies with respect to such rights and obligations.

62. RCRA Compliance and Work Obligations. This Proof of Claim is filed in a protective manner with respect to ASARCO's compliance and work obligations under the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901 et seq. RCRA establishes a comprehensive regulatory program for generators of hazardous waste and for owners and operators of facilities that treat, store, or dispose of hazardous waste. ASARCO is the owner and operator of RCRA-regulated facilities in: Hayden, AZ; Mission, AZ; Ray, AZ; Globe, CO; East Helena, MT; El Paso, TX; Amarillo, TX; Houston, TX; and Tacoma WA, and other locations. Pursuant to its authority under RCRA, EPA has promulgated regulations applicable to such generators and such owners and operators of hazardous waste management facilities. The federal RCRA implementing regulations are set forth at 40 C.F.R. Part 260 et seq. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, EPA has authorized various States to administer various aspects of the hazardous waste management program in such States. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), these authorized State hazardous waste management program are enforceable by EPA. Under RCRA, ASARCO is required, inter alia, to operate in compliance with RCRA regulatory requirements, implement closure and post-closure work and corrective action work, and perform any necessary action with respect to any imminent and substantial endangerment to health or the environment, see, e.g., 42 U.S.C. §§ 6924, 6928, 6973, as required by RCRA and/or RCRA permits, Consent Decrees or Administrative Orders. EPA and ASARCO have entered into RCRA Consent Decrees with regard to the Encycle, El Paso and East Helena Facilities. ASARCO is liable for injunctive and compliance obligations that it is required to perform under RCRA, RCRA permits, and all work requirements under RCRA permits, consent decrees and administrative orders. It is the position of the United States that a proof of claim is not required to be filed for injunctive, compliance,

and regulatory obligations and requirements under RCRA. See Paragraph 61 supra.

#### **ADDITIONAL CERCLA CLAIMS BY EPA FOR RESPONSE COSTS**

63. ASARCO is liable under CERCLA to reimburse the United States for the costs (plus interest due under 42 U.S.C. § 9607(a)) of actions taken or to be taken by the United States in response to releases and threatened release of hazardous substances at the Sites set forth in paragraphs 64 to 149 below. Each of these Sites is a facility within the meaning of CERCLA. There have been releases or threats of releases of hazardous substances at each of the Sites. Response costs have been and will be incurred by EPA at each of the Sites not inconsistent with the National Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, and set forth at 40 C.F.R. ¶ 300, as amended. Other potentially responsible parties may along with ASARCO also be jointly and severally liable to the United States under CERCLA with respect to some of the Sites.

#### **Big River Mine Tailings and Federal Mine Tailings Sites**

64. The Federal Mine Tailings Site is one of the mine waste sites within the St. Francois County Mining Area. The Federal Mine Tailings Site is located in and around St. Joe State Park, near the City of Park Hills in St. Francois County, Missouri.

65. The Big River Mine Tailings Site is a separate Site in St. Francois County and was added to the National Priorities List ("NPL") on October 14, 1992.

66. ASARCO's corporate predecessor, Federal Lead Co., previously owned and operated lead mining and milling operations at the Federal Mine Tailings Site. During this time period, the Federal Lead Co. disposed of mining and milling wastes including hazardous substances at the Federal Mine Tailings Site by pumping mine and mill tailings across the site. Migration of mine waste including hazardous substances from the Federal Mine Tailings Site has



occurred via wind erosion, storm water runoff, and mechanical means such as hauling or track-out. Mine waste including hazardous substances from the Federal Mine Tailings Site has migrated to residential yards, surface waters and sediments, which are being addressed as part of the Big River area-wide remedial and removal activities.

67. ASARCO is jointly and severally liable at these Sites under Section 107(a) of CERCLA, 42 U.S.C. 9607(a) because ASARCO is a former owner/operator of the Federal Mine Tailings facility at the time of disposal of hazardous substances, and/or is a person who arranged for disposal of a hazardous substance at the Site.

68. ASARCO, The Doe Run Resources Corporation, and the State of Missouri are parties to an Administrative Order on Consent ("AOC"), Docket No. VII-97-F-0009, with EPA to conduct an Engineering Evaluation/Cost Analysis ("EE/CA") for the Federal Site. In addition, ASARCO and Doe Run are parties to an AOC, Docket No. VII-97-F-0002, with EPA that requires them to conduct a Remedial Investigation and Feasibility Study ("RI/FS") addressing impacts from all of the piles in St. Francois County to soil, surface water and sediment. See Paragraph 61 supra. In addition, Doe Run is a party to an AOC, Docket No. CERCLA-7-2004-0167, requiring Doe Run to address residential yards with elevated lead levels around piles in St Francois County.

69. EPA has incurred unreimbursed response costs, not inconsistent with the NCP, through June 10, 2006 at the Federal Mine Tailings Site of approximately \$238,321.

70. EPA estimates that it will in the future incur response costs at the Federal Mine Tailings Site related to the covering the exposed tailings and stabilizing the tailings that have washed past the tailings dam in the amount of \$8,000,000.

71. EPA has incurred unreimbursed response costs, related to the area-wide remedial

and removal activities, not inconsistent with the NCP, through June 10, 2006 at the Big River Mine Tailings Site of approximately \$936,750.

72. EPA estimates that it will in the future incur response costs at the Big River Mine Tailings Mine Site related to the remediation of residential yards, surface waters and sediments in the amount of \$10,000,000 - \$20,000,000.

73. ASARCO is jointly and severally liable to the United States for these Sites in the above stated amounts (plus interest due under 42 U.S.C. § 9607(a)). These amounts do not include the AOCs referred to above, with which ASARCO is also required to comply.

**Cherokee County Superfund Site**

74. This site located in Kansas was previously identified in the U.S. Initial Proof of Claim. All allegations contained therein are incorporated herein by reference. In that Initial Proof of Claim the United States set forth a claim in the amount of \$27,373 for response costs incurred through January 18, 2006.

75. In addition to the response costs identified in the U.S. Initial Proof of Claim, as to the Baxter Springs (OU3) and the Treece (OU4) subsites for response actions to surficial wastes at the Baxter Springs and Treece subsites and impacted sediments within Tar Creek, EPA estimates that it has incurred or will incur additional and future response costs, not inconsistent with the NCP, in the amount of \$8,000,000.

76. In addition to the response costs identified in the U.S. Initial Proof of Claim, as to the Spring River (OU2) subsite for stream and tributary and other dredging at points at and below ASARCO's initial connection with affected waters, EPA estimates that it has incurred or will incur substantial additional and future response costs, not inconsistent with the NCP, at the Site. Numerous investigations and related estimates related to the costs of cleanup stream,

tributary and lake dredging are ongoing and have been provided and will be to ASARCO.

Those costs are generally applicable to the potential costs at this subsite. However, the cost of this liability is presently undetermined and this claim is therefor filed as a contingent unliquidated claim for such liability.

77. ASARCO is jointly and severally liable to the United States for this Site (plus interest due under 42 U.S.C. § 9607(a)).

#### **Circle Smelting Site**

78. Circle Smelting is a former zinc smelter owned and operated by ASARCO between 1904 and 1994 which produced, inter alia, large quantities of zinc slag containing lead and other metals that were spread over the smelter facility and other areas of the Village of Beckemeyer, Illinois. In 1997, ASARCO signed an administrative order on consent to excavate residential and municipal contaminated soils to a soil repository located on the smelter site. In 2001, a prospective purchaser agreement was signed and a part of the Smelter site is now being reused. ASARCO remains the owner of part of the smelter property, including the contaminated soil repository.

79. In 2002, ASARCO defaulted under the administrative order and work at the Site stopped. EPA took over work at the Site between 2002 and 2005. Some of EPA's work during this period was funded by monies provided from the ASARCO Environmental Trust. ASARCO signed a modification to the original administrative order in 2005 wherein it agreed to perform the removal work using funds from the consent decree's trust fund. All removal work is on schedule to be completed by the close of 2006.

80. ASARCO is jointly and severally liable to the United States under CERCLA with respect to the Circle Smelting Site because (a) it is the owner of a portion of the Site, and (b) it

was the owner of a portion of the Site at the time of disposal of hazardous substances and (c) it has obligations under the AOC. See Paragraph 61 supra.

81. EPA has incurred \$8,008,637.50 in unreimbursed response costs (including interest) not inconsistent with the NCP between February 1, 2003 and June 30, 2006.

82. ASARCO is jointly and severally liable to the United States for this Site in the amount of \$8,008,637.50 (plus interest due under 42 U.S.C. § 9607(a)).

83. Removal work is currently being conducted by ASARCO using monies from the ASARCO Environmental Trust. This work is scheduled to be completed in 2006. If the work is not completed in 2006, additional funds will be necessary to finish uncompleted work. Finally, continuing operation and maintenance of the soil repository on the former smelter property presently owned by ASARCO will be necessary. Assuming ASARCO completes the work removal work in 2006, EPA estimates that ASARCO will in the future incur response costs at the Site for operations and maintenance as to the property it owns in the amount of \$5,000 per year.

84. ASARCO is the current owner of portions of this Site. See Paragraphs 203-204 infra.

**Federated Metals Site (Houston)**

85. The site is located in Houston, Texas. The site is bound on the north by the Union Pacific Railroad, on the west by Interstate 610 and on the south by a diked area formerly used for the disposal of ship channel dredgings. The former Federated Metals plant received wastes from the production of nonferrous alloys. The primary waste generated was magnesium slag. During plant operations, the magnesium dross was placed in waste piles throughout the facility after going through the metal recovery process. Other wastes on-site include spend

graphite anodes, refractory bricks, asbestos material, rusted empty drums, and rubber rings. The site was also used as a disposal site for dross that contains the naturally occurring radioactive isotopes thorium 228, 230 and 232. The thorium affected dross was apparently generated as a waste material in the production of magnesium anodes for cathodic protection systems.

86. The State of Texas has indicated that it intends to pursue remediation at this Site. ASARCO has entered into agreements with the State of Texas to perform work associated with the contamination at this Site. (In the Matter of the Site Known as Federated Metals State Superfund Site: agreements dated 6/30/93 and 12/1/99.) Either directly or due to its relationship with Federated Metals, ASARCO is a former owner/operator of the Site.

87. This Supplemental Proof of Claim is filed in a protective manner with respect to any such obligations of ASARCO should the State refer the site to the EPA and Debtor or any subsidiary debtor does not perform the clean up of the site. EPA refers to the proofs of claim filed by Texas.

88. Due to its relationship with Federated Metals, Inc., ASARCO is the current owner of the Site. See paragraphs 203-204 infra.

89. Although ASARCO is liable for future work at this Site, the cost of such liability is presently undetermined and this claim is therefor filed as a contingent unliquidated claim for such liability.

#### **Globe Site**

90. This site in Denver, Colorado was previously identified in the U.S. Initial Proof of Claim. All allegations contained therein are incorporated herein by reference. In that Initial Proof of Claim the United States set forth a claim in the amount of \$29,607 for response costs incurred between February 1, 2003 and December 31, 2005. The United States hereby updates

the past costs incurred to be \$66,283.

91. ASARCO is the current owner of portions of this Site. See Paragraphs 203-204 *infra*.

92. The United States has a lien with respect to this Site. See Paragraph 205 *infra*.

93. In addition to the response costs identified in the U.S. Initial Proof of Claim, EPA estimates that additional and future work at the Site at portions of the Site not owned by ASARCO will be \$4,000,000. The work required on the portions of the Site not owned by ASARCO is that work required to complete the remedy in OU3 which includes sampling and if necessary further remediation of commercial and industrial properties.

94. The United States estimates that additional and future work at portions of the Site owned by ASARCO will be \$10,000,000. That portion of the work is the work set forth for OUs 1, 2 and 4.

95. ASARCO is liable to the United States for this Site in the total amount of \$14,066,283 (plus interest due under 42 U.S.C. § 9607(a)).

**Hayden Facility.**

96. ASARCO is the owner and operator of the Hayden Site in Arizona. The operations at Hayden include a crusher, a concentrator, an overhead conveyor, an active smelter, an inactive smelter, property with tailings piles, and other nearby properties in Hayden and Winkelman, Arizona. Hayden is located near the intersection of Highway 177 and Route 77, approximately 100 miles southeast of Phoenix and 52 miles northeast of Tucson.

97. ASARCO is liable to the United States under CERCLA with respect to the Hayden Site because (a) it is the owner/operator of a portion of the Site and (b) was the owner/operator of a portion of the Site at the time of disposal of hazardous substances.

98. ASARCO is the current owner of portions of this Site. See Paragraphs 203-204 infra.

99. EPA has incurred response costs, not inconsistent with the NCP, through June 1, 2006 at this Site of at least \$2,554,058.

100. EPA has received reimbursement for some but not all of those costs from the ASARCO Environmental Trust. The exact accounting of how much of the costs incurred by EPA through June 1, 2006, shall be reduced by payments from the ASARCO Environmental Trust is not complete. As a result, ASARCO is liable to the United States under CERCLA for \$2,554,058 minus any proceeds from the ASARCO Environmental Trust that are properly applied to such costs. EPA believes that the past cost claim shall be reduced by at least \$1,000,000 as a result of payments from the ASARCO Environmental Trust.

101. As to further costs, the contract costs of remedial investigation over a three year period are estimated at approximately \$1.468 million. Subtracting amounts already spent and funds provided to the Hayden Special Account for expenditure on the remedial investigation in 2006, EPA anticipates that it will incur, at least, \$400,000 for the remedial investigation in 2007.

102. EPA has not yet determined what cleanup levels are appropriate, the number of yards which will need to be addressed, or the costs of each cleanup. Recognizing all these uncertainties, the range of costs for cleanup of residential yards could be as low as \$150,000 or as high as \$1,500,000.

103. ASARCO is jointly and severally liable to the United States under CERCLA with respect to the Hayden Site because it is the owner/operator of a portion of the Site, in the total amount of, at least, \$2,104,000 - \$3,454,000 which does not include its potential future liability for cleanup on the non-residential property it owns.

### **Jack Waite Mine Site**

104. This site near Prichard, Idaho was previously identified in the U.S. Initial Proof of Claim. All allegations contained therein are incorporated herein by reference. In that Initial Proof of Claim the United States set forth a claim in the amount of \$116,539 for response costs incurred through December 21, 2005.

105. EPA also incorporates paragraphs 175-178 below and joins in the estimate of future costs presented by USDA.

### **Jasper County Superfund Site**

106. ASARCO is liable to the United States under CERCLA with respect to the Jasper County Superfund Site which is located in southwestern Missouri and is about 270 square miles in size.

107. The Site is divided into five separate operable units (OUs) for clean up including OU-1, Mining and Milling Wastes; OU-2, Smelter Waste Residential Yards; OU-3, Mine Waste Residential Yards; OU-4, Ground Water, and OU-5, Spring River Watershed. EPA has issued Record of Decisions (RODs) for OUs 1, 2, 3 and 4. ASARCO has resolved its CERCLA liability for OU 4 with the United States in an earlier Consent Decree.

108. EPA has incurred past unreimbursed response costs, not inconsistent with the NCP, through December 31, 2005, for OU1 of approximately \$2,669,114.78.

109. ASARCO owned or operated properties where mining wastes must be cleaned up under OU-1. ASARCO is jointly and severally liable under Section 107(a)(2) of CERCLA, 42 U.S.C. 9607(a)(2) for OUs 1 and 5 because ASARCO is a former owner/operator of mines and mills at the time of disposal of hazardous substances at the Site.

110. OU-1 includes surface water and sediments cleanups in certain tributaries and



surface mining waste cleanups. EPA estimates that it may cost EPA or the jointly and severally liable parties approximately \$60 million to perform the required work at OU1. However, EPA does not claim that ASARCO is jointly and severally liable for all costs of cleanup associated with the OU-1 cleanups. Based on EPA estimates, ASARCO's total response costs liability for OU1 future costs is, at least \$18,490,000.

111. OU-5 includes surface water and sediment cleanups in the Spring River Watershed. EPA estimates that approximately 120,000 linear feet of this stream cleanup is downstream from ASARCO's former properties. Based on EPA estimates, ASARCO's total response costs liability for OU-5 future costs associated with that 120,000 linear feet is, at least \$9,600,000.

112. EPA also estimates that there will be additional costs associated with the cleanups at Ous 1 and 5 and estimate those costs to be \$4,494,400.

113. Thus, ASARCO's liability for OUs 1 and 5 for this Site is the total amount of \$32,584,400 (plus interest due under 42 U.S.C. § 9607(a)).

#### **Madison County Site**

114. The Madison County Mines Site is located in Madison County, Missouri. The City of Fredericktown is centrally located in the county, approximately 85 miles south of St. Louis. There are approximately 1,700 single family homes in Fredericktown. Historic mining areas surround the city.

115. The Madison County Site includes a number of tailings and chat piles, one of which is known as the Catherine Mine subsite. Waste has migrated from the piles via wind erosion, water erosion, and mechanical movement within Madison County and the City of Fredericktown. The hauling of chat and tailings occurred and mine waste was used in the yards,

driveways, and on the city's streets. These practices have resulted in residential properties with levels of lead exceeding EPA's time-critical removal level of 1,200 ppm.

116. The Catherine Mine subsite is currently owned by Delta Asphalt Co. but was previously owned and operated by ASARCO or its corporate predecessors. ASARCO is jointly and severally liable at this Site under Section 107(a) of CERCLA, 42 U.S.C. 9607(a), because ASARCO is a former owner/operator of the facility at the time of disposal of hazardous substances at the Site and/or is a person who arranged for disposal of a hazardous substance at the Site.

117. Currently, EPA has fund lead activities ongoing, which include time-critical removal actions to address contaminated residential yards within and around Fredericktown, and remedial investigation activities to determine the nature and extent of soil, surface water, sediment and groundwater contamination. The Catherine Mine subsite includes EPA's soil repository, which contains lead contaminated soils excavated from residential yards pursuant to EPA's removal activities. The Madison County Mines Site was added to the NPL on September 29, 2003.

118. EPA has incurred response costs not consistent with the NCP through June 10, 2006 of \$22,821,096.

119. EPA estimates that it will in the future incur additional response costs at the Madison County Site related to further investigations, remediation of residential yards, surface waters, and sediments, stabilization of piles, and repository construction costs, not inconsistent with the NCP, at the Madison County Site in the amount of \$35,946,986.

120. ASARCO is jointly and severally liable to the United States for this Site for the above referenced costs (plus interest due under 42 U.S.C. § 9607(a)).

### **Newton County Superfund Site**

121. The Newton County Mine Tailings Site is located in Newton County, Missouri and is a portion of the Tri-State Mining District located in Kansas, Missouri and Oklahoma, which was once the largest lead and zinc mining area in the world. The Site is listed on the National Priorities List ("NPL"). This Site is located directly south of the Jasper County Superfund Site. The site currently consists of six former mining subdistricts, Granby, Spring City-Spurgeon, Diamond, Wentworth, Stark City and the Jasper County Overlap..

122. ASARCO is the corporate successor to the Federal Mining & Smelting Company ("Federal") by a 1953 merger. Federal owned and mined, or leased for mining, extensive tracts of land within the Granby and Spring City/Spurgeon Subdistricts. Federal operated within these subdistricts intermittently between 1926 and 1944. During Federal's ownership or operation hazardous substances were released to the ground water and soils within the Granby and Spring City/Spurgeon Subdistricts.

123. ASARCO is liable at these two subdistricts under Section 107(a)(2) of CERCLA, 42 U.S.C. 9607(a)(2), because ASARCO is a former owner/operator of the facility at the time of disposal of hazardous substances at the Site.

124. EPA estimates that it has or will in the future incur response costs, not inconsistent with the NCP, at the Granby Subdistrict in the amount of \$1,958,564. This work includes sampling, provision of bottled water, remediation of mine tailing piles and oversight of installation of the water system. ASARCO is jointly and severally liable to the United States for this Site for these costs (plus interest due under 42 U.S.C. § 9607(a)).

125. EPA estimates that it has or will in the future incur response costs, not inconsistent with the NCP, at the Spring City/Spurgeon Subdistrict in the amount of \$1,582,245.

This work includes remediation of mine tailings piles and installation of a water system to areas where residential water-supply wells were impacted by groundwater that was contaminated by ASARCO's or its predecessors operations. ASARCO is jointly and severally liable to the United States for this Site for these costs (plus interest due under 42 U.S.C. § 9607(a)).

**Richardson Flat Tailings Site, Park City, Utah**

126. The Richardson Flat Tailings Site is approximately three and one half miles northeast of Park City, in Summit County, Utah. Richardson Flat is a former mine tailings impoundment. It covers approximately 160 acres immediately southeast of the junction of U.S. Highway 40 and Utah Highway 248. Park City Ventures was a Utah partnership formed by ASARCO's predecessor, American Smelting and Refining Company, and Anaconda Company, a predecessor of the Atlantic Richfield Company. Park City Ventures conducted mining and milling activities and used Richardson Flat as a depository for mill tailings from 1970 until 1979.

127. ASARCO is jointly and severally liable under Section 107(a)(2) of CERCLA, 42 U.S.C. 9607(a)(2), because ASARCO is a former owner/operator of the facility at the time of disposal of hazardous substances at the Site.

128. EPA issued a Record of Decision (ROD) in July 2005, providing for removing contaminated sediments from the nearby wetlands, covering contaminated sediments in the diversion ditch, capping the tailings impoundment with clean fill and the imposition of deed restrictions on future land and groundwater use at Richardson Flat.

129. ASARCO is liable to EPA for unreimbursed response costs of approximately \$607,000 (plus interest due under 42 U.S.C. § 9607(a)) for site assessment work.

**Stephenson Bennett Mine Site**

130. This site in Dona Ana County, New Mexico, was previously identified in the U.S.

Initial Proof of Claim. All allegations contained therein are incorporated herein by reference. In that Initial Proof of Claim the United States set forth a claim in the amount of \$791,221 for past response costs plus interest.

#### **Tar Creek Site**

131. The 40-square-mile Tar Creek Superfund Site consists of the areas of Ottawa County, Oklahoma, that have been contaminated by mining waste generated by lead and zinc mining that began in the late 1800's and ceased in about 1970. Ottawa County is located in northeastern Oklahoma on the Kansas and Missouri borders. The principal on-Site cities located in the mining area include Picher, Cardin, Commerce, Quapaw, and North Miami.

132. ASARCO is the corporate successor to Federal Mining and Smelting Company ("Federal"). Federal conducted mining or milling operations on some or all of eleven Ottawa County properties that were part of the Site, at various times during the period from 1918 to about 1952. During those operations, Federal dumped or spilled lead, cadmium, and zinc-contaminated chat and other tailings on the Site in chat piles or tailings ponds. Federal's operations also emitted contaminated tailings onto OU2 and OU4 as wind-borne dust and on OU5 as waterborne sediment during mining and milling operations.

133. ASARCO is jointly and severally liable under Section 107(a)(2) of CERCLA, 42 U.S.C. 9607(a)(2) at OU2, OU4, and OU5 because it is a former owner/operator of a facility at the time of disposal of hazardous substances at the facility within the meaning of 42 U.S.C. § 9607(a)(2).

134. EPA has incurred response costs, not inconsistent with the NCP, totaling approximately, \$154,458,203 at OU2, OU4 and OU5 as of June 30, 2006.

135. The following summarizes EPA's response actions at OU2, OU4, and OU5:

a. OU2 - OU2 is generally the residential areas of the Site. Residents, especially children, were directly exposed to contaminated mine and mill tailings in residential yard soil in the OU2 area. In the mid 1990's, about 21 percent of the children living in OU2 were found to have elevated blood lead levels. In response, beginning in 1994, EPA began sampling soils at day care facilities, school yards, athletic fields, playgrounds and other areas where children tend to congregate. EPA later expanded its sampling activity to include all residential areas of the Site. Using its removal action authority, beginning in 1995, EPA began to excavate lead- and cadmium-contaminated soil in residential areas. Concurrently, EPA began a remedial investigation and feasibility study (RI/FS) for OU2. In 1997, EPA issued a Record of Decision (ROD) memorializing its selection of a remedy to address contaminated soil in the residential areas of Operable Unit 2. Under the removal actions and under the Operable Unit 2 ROD, EPA has excavated lead-contaminated soil at approximately 2,150 homes and properties. Since EPA has undertaken the action to address contaminated soil in Operable Unit 2, blood lead levels in Site children have decreased dramatically and are now close to national averages. The OU2 response action is almost complete and additional costs should not exceed \$5.1 million. EPA has incurred OU2 response costs of approximately \$134,472,935 as of June 30, 2006.

b. OU4 - OU4 generally means contaminated parts of the Site (both urban and rural) that are not presently used for residential purposes or which are sparsely used for residential purposes. EPA has just completed its RI/FS for OU4, and is preparing a proposed plan of action for public comment. EPA cannot be sure of the cost of the response action for OU4 until the National Contingency Plan remedy selection process is complete, but EPA projects that costs will be between \$122,000,000 and \$328,000,000. Unreimbursed costs incurred for OU4 as of June 30, 2006, are approximately \$9,405,163.

c. OU5 - OU5 addresses contaminated sediments in Tar Creek (here meaning the stream), from the point at which Lytle Creek enters Tar Creek down to the lake-head delta at Grand Lake. OU5 also includes contaminated sediments in Elm Creek from its origin near the Kansas border to its convergence with the Neosho River. EPA's investigations of OU5 are preliminary, and the cost of the OU5 liability is presently undetermined and this claim, for future OU5 costs, is therefor filed as a contingent unliquidated claim for such liability. Costs incurred for OU5 as of June 30, 2006, are approximately \$66,597.00

136. As discussed above, EPA shall incur substantial additional costs in performing further response actions at OU2, OU4 and OU5. At OU4 the additional costs will generally be incurred to address the tens of millions of cubic yards of mining waste that remain on the site in chat piles and tailings ponds. At OU5, additional costs may be incurred to address contaminated sediment in the stream beds described above.

137. EPA does note that to the extent it performs further work at OU5 such work would likely be work that is also the subject of the natural resource damage claim that is being made in this action by the United States Department of the Interior and the performance of such work may have the effect of reducing the amount of restoration work and damages asserted by the Department of the Interior in its proof of claim.

138. ASARCO is jointly and severally liable to the United States for past and future costs this Site as identified above (plus interest due under 42 U.S.C. § 9607(a)).

#### **Taylor Springs**

139. The ASARCO Taylor Springs Site is located in the Village of Taylor Springs, Montgomery County, Illinois, and consists of approximately 673 acres, of which 303 acres are

wooded, 189 acres are used for agriculture and the remaining 181 acres comprise the former and current site operations area. There are several lakes located on the northwest edge of the site as well as drainage routes that flow through a series of wetlands and into the Middle Fork of Shoal Creek. Large quantities of zinc slag containing lead and other metals that were spread over the smelter facility, residential and municipal areas of Taylor Springs, Illinois.

140. ASARCO purchased the site operations area and surrounding property from American Zinc Lead and Smelting Company (now Blue Tee Corp.) in 1971 and operated the facility. ASARCO maintains ownership of the site operations area and portions of the surrounding property. The site was proposed for the NPL in April 2006. EPA is conducting a removal action that involves a determination of the extent, if any, of high concentrations of lead in residential and municipal soils from slag in Taylor Springs and expects to commence RI/FS work for this Site.

141. EPA has incurred \$174,155.57 as of June 30, 2006 in unreimbursed response costs not inconsistent with the NCP.

142. EPA has only recently become involved at this Site and the nature and extent of the contamination is still under investigation. Total future costs at the Site are estimated to be between \$9,000,000 and \$38,000,000 depending on the volume of soils needing to be excavated and whether they will be disposed of on the smelter facility or off-site. A significant portion of these cleanup activities will be on property owned by ASARCO.

143. ASARCO is liable to the United States under Section 107 of CERCLA with respect to the Taylor Springs Site because (a) it is the owner of a portion of the Site and (b) was the owner of a portion of the Site at the time of disposal of hazardous substances.

144. ASARCO is the current owner of portions of this Site. See Paragraphs 203-204



infra.

145. ASARCO is jointly and severally liable to the United States for this Site in an amount between \$9,174,155 and \$38,174,155.

**Vasquez Blvd./Interstate -70 Superfund Site**

146. This site in Denver, Colorado, was previously identified in the U.S. Initial Proof of Claim. All allegations contained therein are incorporated herein by reference. In that Initial Proof of Claim, the United States set forth a claim in the amount of \$347,176 for past response costs, plus interest.

147. In addition, EPA has incurred unreimbursed past costs for work on the OU1 portion of the Site in the amount of \$122,305.

148. In addition to the costs identified in the U.S. Initial Proof of Claim, EPA estimates that additional and future work at the Site will be \$2,970,000. This work will include the conclusion of the RI/FS for and the implementation of the response actions selected for OU2.

149. ASARCO is liable to the United States under Section 107 of CERCLA with respect to this Site because it was the owner of a portion of the Site at the time of disposal of hazardous substances. ASARCO is jointly and severally liable to the United States for this Site as in the total amount of \$3,439,481 (plus interest due under 42 U.S.C. § 9607(a)).

**CERCLA LIABILITIES TO THE DEPARTMENT OF AGRICULTURE**

150. ASARCO is liable under CERCLA to reimburse the United States for the costs (plus interest due under 42 U.S.C. § 9607(a)) of actions taken or to be taken by the United States in response to releases and threatened release of hazardous substances at the Sites set forth in paragraphs 151 to 194 below. Each of these Sites is a facility within the meaning of CERCLA. There have been releases or threats of releases of hazardous substances at each of the Sites.

Response costs have been and will be incurred by the United States Department of Agriculture or other agencies of the United States at each of the Sites not inconsistent with the National Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, and set forth at 40 C.F.R. ¶ 300, as amended.

**Azurite Mine Site**

151. This site in Whatcom County, Washington, was previously identified in the U.S. Initial Proof of Claim. All allegations contained therein are incorporated herein by reference. In that Initial Proof of Claim, the United States set forth a claim in the amount of \$219,410 for response costs incurred through November 30, 2005.

152. In addition to the costs identified in the U.S. Initial Proof of Claim, the USDA has incurred additional past response costs of \$10,063.75.

153. Because the EE/CA for this Site has not been completed, the cost of the USDA's future response actions onsite is uncertain. However, in addition to the costs identified in the U.S. Initial Proof of Claim, the USDA estimates that additional and future work at the Site will cost \$15,000,000. *The future work for the site requires road improvements/construction to access the site, and either removing the hazardous substances for off-site disposal or construction of an on-site mine waste repository, and long-term operation and maintenance costs.*

154. ASARCO is jointly and severally liable to the United States for this Site in the total amount of \$15,229,473 (plus interest due under 42 U.S.C. § 9607(a)).

**Black Pine Mine Site**

155. This site near Phillipsburg, Montana, was previously identified in the U.S. Initial Proof of Claim. All allegations contained therein are incorporated herein by reference.

156. In the U.S. Initial Proof of Claim the United States asserted a past cost claim of

\$21,500, for costs incurred through September 30, 2005. The United States hereby withdraws that claim.

157. Because the EE/CA for this Site has not been completed, the cost of USDA's future response actions onsite is uncertain. However, the USDA estimates that additional and future work at the Site will cost \$188,016. The response action would consist of: 1) excavating heavy metal laden soils on National Forest Service lands onsite; 2) hauling these contaminated soils to a constructed repository for internment; 3) replacing the contaminated soils with clean fill; and 4) Forest Service oversight of the project contractor.

158. ASARCO is jointly and severally liable to the United States for this Site in the total amount of \$188,016 (plus interest due under 42 U.S.C. § 9607(a)).

#### **Combination Mine Site**

159. This site near Phillipsburg, Montana, was previously identified in the U.S. Initial Proof of Claim. All allegations contained therein are incorporated herein by reference. In that Initial Proof of Claim, the United States set forth a claim in the amount of \$31,712 for response costs incurred through December 21, 2005.

160. Because the EE/CA for this Site has not been completed, the cost of USDA's future response actions onsite is uncertain. However, in addition to the costs identified in the U.S. Initial Proof of Claim, USDA estimates that additional and future work on the USDA portions of the Site, including the preparation of an EE/CA for the Site and the implementation of all necessary response actions to protect the public health and the environment, will be approximately \$510,325. The response action would consist of: 1) excavating heavy metal laden tailings located in pockets along the stream bank of the Lower Willow Creek drainage; 2) hauling these contaminated tailings to a constructed repository for internment; 3) reconstructing

the stream bank area; and 4) Forest Service oversight of the project contractor.

161. ASARCO is jointly and severally liable to the United States for this Site in the total amount of \$542,037 (plus interest due under 42 U.S.C. § 9607(a)).

**Flux Mine Site**

162. This site near Patagonia, Arizona, was previously identified in the U.S. Initial Proof of Claim. All allegations contained therein are incorporated herein by reference. In that Initial Proof of Claim, the United States set forth a claim in the amount of \$10,575 for response costs incurred through December 22, 2005.

163. In addition to the costs identified in the U.S. Initial Proof of Claim, USDA has incurred additional past costs through May 31, 2006 of \$790.72.

164. Because the EE/CA for this Site has not been completed, the cost of USDA's future response actions onsite is uncertain. However, in addition to the costs identified in the U.S. Initial Proof of Claim, USDA estimates that additional and future work at the Site will cost between \$170,000 and \$250,000. The site has been reclaimed, however, water is infiltrating through a covered waste rock pile and emerging as low-pH, metal laden water, which then drains to the nearby stream. The response action would consist of: 1) additional characterization of the hydrology and water quality at the site; 2) construction of an upgraded cover material, diversion structures, and a passive water treatment system as necessary; and 3) oversight by the Forest Service of the project contractor.

165. ASARCO is jointly and severally liable to the United States for this Site in the total amount of \$181,365.72 - \$261,365.72 (plus interest due under 42 U.S.C. § 9607(a)).

**Golinsky Mine Site**

166. This site near Redding, California, was previously identified in the U.S. Initial

Proof of Claim. All allegations contained therein are incorporated herein by reference. In that Initial Proof of Claim, the United States set forth a claim in the amount of \$2,264,476 for response costs incurred through December 21, 2005.

167. The California Regional Water Quality Control Board issued a clean-up and abatement order to the USDA to abate the acid mine drainage flowing from the Site into Little Backbone Creek, on USDA land, upstream of Shasta Lake. In July 1997, USDA sent ASARCO a CERCLA notice letter requesting that ASARCO perform response actions at the Site. USDA initiated a draft EE/CA in 1998 and developed a Removal Action Memorandum and draft AOC in 1999. ASARCO refused to participate in the initial response actions, which have failed fully to remedy the acid mine drainage as required by the California Regional Water Quality Control Board's clean-up and abatement order.

168. The revised EE/CA, based on a pilot study of a passive treatment alternative, will be completed during the summer of 2006. In addition to the costs identified in the U.S. Initial Proof of Claim, USDA estimates that future work, implementing, overseeing, maintaining, and evaluating the passive treatment alternative, will cost \$6,581,080. The future costs are for construction of a three cell passive treatment system to collect and treat acid mine discharge, plus operations and maintenance costs for 30 years.

169. ASARCO is jointly and severally liable to the United States for this Site in the total amount of \$8,845,556 (plus interest due under 42 U.S.C. § 9607(a)).

#### **Iron Mountain Mine Site**

170. This site near Superior, Montana, was previously identified in the U.S. Initial Proof of Claim. All allegations contained therein are incorporated herein by reference. In that Initial Proof of Claim, the United States set forth a claim in the amount of \$83,519 for response

costs incurred through December 22, 2005.

171. The Iron Mountain Mine itself is on private land owned by ASARCO. Mill tailings from the mine have been released along approximately 4 miles of Flat Creek, half of which lie within USDA administered land. USDA's 2003 Site Investigation determined that approximately 1,000,000 cubic yards of contaminated sediments and soils on USDA land along Flat Creek require removal to a joint mine waste repository.

172. Because the EE/CA for this Site has not been completed, the cost of USDA's future response actions onsite is uncertain. However, in addition to the costs identified in the U.S. Initial Proof of Claim, USDA estimates that additional and future work on the USDA portions of the Site will cost \$1,500,000. Future removal action work may consist of excavation and interment of tailings material into a repository at the site. Additionally, stream restoration should also occur.

173. ASARCO is jointly and severally liable to the United States for this Site in the total amount of \$1,583,519 (plus interest due under 42 U.S.C. § 9607(a)).

174. ASARCO is the current owner of portions of this Site. See Paragraphs 203-204 infra.

#### **Jack Waite Mine Site**

175. This site near Prichard, Idaho, was previously identified in the U.S. Initial Proof of Claim. All allegations contained therein are incorporated herein by reference. In that Initial Proof of Claim, the United States set forth a claim in the amount of \$116,539 for response costs incurred through December 21, 2005.

176. During ASARCO's operation of the Site from 1934-1961, ASARCO produced at least 411,734 of the approximately 600,000 tons of ore the mine produced during its entire

operational history. The mine, all four tailings ponds, and other areas of scattered tailings are on USDA lands.

177. In accordance with the March 2000 AOC with the USDA and EPA, ASARCO recently completed a final EE/CA, which contains a range of cleanup alternatives costing up to \$21,000,000. Although no alternative has been selected, the USDA estimates that, in addition to the costs identified in the U.S. Initial Proof of Claim, additional and future work at the Site, including oversight and a cost contingency, will cost an estimated \$8,236,000. The response action will generally consist of consolidating waste in three repositories, one at tailings pond 3, the second at the Duthie Townsite near tailings pond 2, and moving tailings pond one to a repository at Borrow Area 2. The discrete areas of tailings scattered along the creek will be removed from the flood plain and placed in one of the repositories. In addition, work required will include regrading the 1500-level waste rock pile and rerouting the adit discharge around the waste rock pile.

178. ASARCO is jointly and severally liable to the United States for this Site in the total amount of \$8,352,539 (plus interest due under 42 U.S.C. § 9607(a)).

**Upper Blackfoot/Mike Horse Mine Site**

179. This site in Helena, Montana, was previously identified in the U.S. Initial Proof of Claim. All allegations contained therein are incorporated herein by reference. In that Initial Proof of Claim, the United States set forth a claim in the amount of \$67,628 for response costs incurred through December 23, 2005.

180. In addition to continuing leakage from the Mike Horse Tailings Impoundment dam, a recent USDA analysis detected voids in the dam, caused by intermittent piping of tailings or dam subsidence, of up to fourteen feet across, increasing seepage due to internal erosion, and

excessive reservoir levels. The dam cannot be relied on over the long term to prevent the impoundment from flowing into the headwaters of the Upper Blackfoot River.

181. ASARCO has prepared a draft EE/CA. Because no alternative has been selected, the cost of the USDA's future response actions onsite is uncertain. However, in addition to the costs identified in the U.S. Initial Proof of Claim, USDA estimates that additional and future work at the Site will cost \$35,000,000. Four actions are needed at the Upper Blackfoot/Mike Horse complex. The first three actions have to do with the controlling of mill tailings and other mine waste materials within Bear Trap Creek, Lower Mike Horse Creek, and the Upper Blackfoot River. These actions may include the total or partial removal of the tailings and waste material from the three drainages with placement within a repository structure. The fourth action at the Upper Blackfoot/Mike Horse complex is the mitigation of the safety and the potential environmental impacts associated with the Mike Horse dam and tailings impoundment. Included in the action is the decommissioning of the dam by totally or partially removing the feature. In addition, the action will include the mitigation of the tailings that are impounded behind the existing dam structure

182. ASARCO is jointly and severally liable to the United States for this Site in the total amount of \$35,067,628 (plus interest due under 42 U.S.C. § 9607(a)).

#### **CERCLA LIABILITIES TO THE DEPARTMENT OF THE INTERIOR**

##### **Tar Creek**

183. The United States incorporates by reference its prior allegations regrading ASARCO's involvement at the Tar Creek Site in Oklahoma.

184. The Department of the Interior, through its Bureau of Indian Affairs (BIA), has incurred response costs, and will continue to do so, in connection with several Operable Units at



the Tar Creek site, including Operable Units 2 and 4. BIA's activities include, but are not limited to, assisting EPA in conducting and monitoring response actions, coordinating EPA activities at the site with Indian landowners, conducting surveys of potential sources of contamination, providing physical security and engineering controls to restrict access to sources of contamination, implementing and enforcing institutional controls to prevent re-contamination of Indian lands, performing community outreach and education, conducting post-response surveys of residential properties, reviewing and commenting on EPA investigative reports and proposed response actions, working with state and federal regulators, and with Tribal representatives, to develop a consensus on approaches to address significant sources of contamination, and undertaking other activities to ensure that planned and ongoing response actions protect public health and the environment. BIA estimates that it has incurred response costs not inconsistent with the National Contingency Plan to be \$2,100,922.99 and will incur additional response costs not inconsistent with the National Contingency Plan of between \$6.6 and \$8.9 million (plus interest due under 42 U.S.C. § 9607(a)).

185. ASARCO is jointly and severally liable to the United States for these costs.

**CERCLA LIABILITIES TO THE UNITED STATES SECTION OF THE  
INTERNATIONAL BOUNDARY AND WATER COMMISSION**

**El Paso (USIBWC)**

186. The International Boundary and Water Commission, United States and Mexico (IBWC) is an officially recognized international organization created by Treaty between the United States and Mexico. The United States Section of the IBWC (USIBWC) is an independent bilateral organization within the U.S. federal government.

187. The USIBWC constructs, operates and maintains the Rio Grande Canalization

Project. One component of the Rio Grande Canalization Project is the American Dam and Canal, which provides the means for physical control and diversion of waters in the Rio Grande. Operation and maintenance of the project is carried out by the American Dam Field Office situated on 5.56 acres immediately across from ASARCO's smelting operation in El Paso, Texas.

188. The 2-mile long American Canal is subdivided into three open canal segments, the upper, middle and lower channels. The upper channel includes the former site of Smelter Town, the middle reach parallels the Burlington Northern and Santa Fe Railroad and the lower reach diverges from the Highway in the area of Old Fort Bliss.

189. The United States incorporates by reference its previous allegations regarding the El Paso Smelter and the El Paso Metals Survey Site. The contamination at the American Dam, Canal and Field office properties have come to be located on these properties because of releases from the El Paso Smelter.

190. Investigations have established that there are unacceptable levels of lead and arsenic in the upper two third of the two-mile project and that the levels are attributed to the canal's location adjacent to the Site. The soil and groundwater contamination are related to the historic operations of the smelter. In addition to lead and arsenic being present in the soil, the groundwater surrounding the canal contains the two elements. The presence of these heavy metals in the groundwater is an indication that for many years these metals have slowly leached from the soil above into the groundwater. In surface and subsurface soils arsenic was routinely detected at concentrations above industrial screening levels of 2 milligrams per kilogram (mg/kg). Lead was occasionally detected at concentrations above both EPA residential and industrial screening levels of 400 and 2,000 mg/kg, respectively. Arsenic and lead need to be

removed from the groundwater before it is discharged into a canal or stream. They estimated that the flow rates of extracted groundwater requiring treatment would likely be as much as what flows on the riverbed surface. Arsenic levels ranged from 0.1 mg/L to a maximum of 1.84 mg/L while lead levels were detected above the action level of 0.015 mg/L. Groundwater percolates into the American Canal through weep holes and fractured joints in the canal. Considering lead and arsenic exist in the groundwater, it is reasonable to assert that these elements are contaminating the canal.

191. In addition, surface soils on the property owned by USIBWC have been heavily contaminated by releases from the Site. Studies have recorded contaminants in the top surface layer that exceeded outdoor industrial worker soil screening levels and further recommended removing the top one-inch of soil, along with the preparation of an exposure mitigation plan. The reports note the presence of elevated concentrations of arsenic, cadmium, lead, mercury, tin and zinc in the soils.

192. The USIBWC has previously incurred response costs at this Site, not inconsistent with the NCP, related to environmental remediation efforts of contaminated soil and ground water of approximately \$186,283.

193. USIBWC anticipates that substantial response actions will be needed as to both the surface soils and groundwater within the canal and surface soils at the field office. This work would likely include: the treatment and disposal of groundwater, the treatment and disposal of soil, monitoring of the construction site for airborne contaminants, testing of soil and water during construction, monitoring for the presence of contaminants for personnel. Removal of surface layer of soil, treatment and replacement or removal of contaminated soil to an authorized disposal site, before and after analysis of the Site. However, the cost of such response action is

presently undetermined and this claim is therefore filed protectively and filed protectively as a contingent unliquidated claim for such liability. See Paragraph 61, supra.

194. ASARCO is jointly and severally liable to the United States under CERCLA with respect to this Site because (a) it is the owner of a portion of the Site, and (b) it was the owner of a portion of the Site at the time of disposal of hazardous substances and (c) it is a party who arranged for disposal of hazardous substances.

### **PENALTIES**

#### **Encycle Consent Decree**

195. **Supplemental Environmental Project: Coy Mine:** The Coy Mine was a copper mine operated by ASARCO in Tennessee. During the mid 1990s, EPA determined that ASARCO had violated its National Pollutant Discharge Elimination System permit. The violations at the Coy Mine were resolved in a consent decree filed in United States of America and State of Texas v. Encycle/Texas, Inc. and ASARCO, Inc. [H-99-1136]. The decree was filed in the Southern District of Texas on April 15, 1999, and entered on October 6, 1999.

196. ASARCO agreed to perform a supplemental environmental project ("SEP") at the Coy Mine which consisted of constructing a four-acre wetland area. The SEP was to be completed by November 2003. ASARCO has not completed this work. The consent decree provides that ASARCO shall pay a penalty of \$200,000, should it not perform the SEP. Hence, ASARCO is liable to the United States for \$200,000 under the above referenced consent decree.

197. **Corpus Christi Environmental Easement:** The October 1999 Consent Decree obligates Debtor to deed a parcel of land in Nueces County, Texas, into a conservation easement for public enjoyment, habitat enhancement, environmental research, and education. After deeding and fencing the parcel, Debtor halted the project at approximately forty percent

complete. Pursuant to the terms of the Consent Decree, Debtor is to pay stipulated penalties of up to \$1 million dollars – to be split evenly between the United States and the State of Texas – should Debtor fail to complete the project. Debtor is liable to the United States for stipulated penalties in the amount of \$500,000, for failure of the Corpus Christi Environmental Easement project.

198. **Corpus Christi Metals Recycling Project:** The October 1999 Consent Decree obligates Debtor to recycle metals from waste materials received at the facility for a period of five years commencing one year after the entry of the Consent Decree. Debtor is required to recycle an average of 522,000 pounds of nickel, copper, chrome and/or tin per year to meet the terms of the project. Debtor did not perform the project. Pursuant to the terms of the Consent Decree, Debtor is to pay a stipulated penalty of up to \$2.25 million – to be split evenly between the United States and the State of Texas – should Debtor fail to complete the project. Debtor is liable to the United States for stipulated penalties in the amount of \$1,125,000 for failure of the Corpus Christi Metals Recycling project.

**East Helena Consent Decree**

199. In its Initial Proof of Claim, the United States asserted a claim of \$6,018,000 on behalf of EPA for stipulated penalties for violations of the East Helena Decree and AOC 91-17 through February 3, 2003. All allegations contained therein are incorporated herein by reference.

200. In January 1998, ASARCO and EPA agreed to a settlement for alleged violations of RCRA and the Clean Water Act at ASARCO's smelter facility in East Helena. This settlement was embodied in a Consent Decree entered in United States v. ASARCO, CV 98-3-H-CCL. That decree requires, among other things, that ASARCO perform a Supplemental

Environmental Program. Hence, ASARCO is obligated to perform this SEP. See Paragraph 61 supra. ASARCO is also liable for any penalty under the Consent Decree or the Clean Water Act that the Court determines in the event ASARCO fails to perform the SEP.

#### **Hayden Post-bankruptcy Consent Agreement**

201. On December 9, 2005, ASARCO LLC and EPA entered into a Consent Agreement and Final Order ("CAFO"), Docket No. CAA-09-2005-0016. The CAFO resolved claims alleged by Region IX in an Administrative Complaint, and Notice of Opportunity for Hearing filed on September 28, 2005. In the CAFO, ASARCO agreed that any plan of reorganization ASARCO submits to the Bankruptcy Court must include a penalty in the amount of \$62,411 as an allowed general unsecured claim.

#### **Omaha Lead Smelter Superfund Site**

202. The penalty claim relating to this site was previously identified in the U.S. Initial Proof of Claim. All allegations contained therein are incorporated herein by reference. In that Initial Proof of Claim, the United States set forth a claim in the amount of at least \$2,473,921 and up to but not more than \$7,421,763.

#### **PROPERTY OF THE ESTATE/DEBTOR-OWNED SITES**

203. ASARCO also has or may in the future have environmental liabilities for properties that are part of its bankruptcy estate and/or for the migration of hazardous substances from property of its bankruptcy estate. ASARCO has potential environmental liabilities at the following properties that it owns, including but not necessarily limited to, properties in the following locations: Hayden, AZ, Ray Mine, AZ, Mission Mine, AZ; Silver Bell Mine, AZ; Black Pine Mine, CO; California Gulch, CO; Globe, CO; Bunker Hill Basin and Box areas, ID; Beckemeyer, IL, Taylor Springs IL, East Helena, MT; Iron Mountain, MT; Mike Horse, MT;

Amarillo, TX; El Paso, TX; Encycle facility, TX; Houston, TX; and Tacoma and Ruston, WA.

204. In accordance with 28 U.S.C. § 959, ASARCO is required to comply with non-bankruptcy law, including all applicable environmental laws, in managing and operating its property. Upon confirmation of any Plan of Reorganization, reorganized ASARCO will be liable as owner or operator of property in accordance with applicable environmental law. The United States is not required to file a proof of claim relating to property of the estate other than for response costs incurred prior to the petition date. This Supplemental Proof of Claim is filed only protectively with respect to post-petition response costs or response action relating to property of the estate. The United States is entitled to administrative expense priority for, inter alia, any response costs it incurs with respect to property of the estate after the petition date. The United States reserves the right to file an application for administrative expense or take other appropriate action in the future with respect to property of the estate.

#### **SECURED CLAIM**

205. The United States hereby gives notice that it asserts it has secured status with respect to ASARCO's liabilities for the following:

- (A) CERCLA lien with respect to portions of the Commencement Bay Nearshore Tideflats Superfund Site in Tacoma and Ruston, Washington, see Paragraphs 24-32 supra;
- (B) CERCLA lien with respect to Globe Site in Denver, Colorado, see Paragraphs 90-95 supra;
- (C) CERCLA lien with respect to the East Helena Site in Montana, see Paragraphs 33-43 supra;
- (D) The LCCHP Trust at the California Gulch Site in Colorado and residual proceeds,

see Paragraphs 19-20 supra.

- (E) Additionally, the ASARCO Environmental Trust was created pursuant to the Consent Decree entered in United States v ASARCO, Inc et al, Civil Action No. 02-2079 (D. Az). The primary res of that Trust is a promissory note with an original principal balance of \$100,000,000 from Americas Mining Corporation and guaranteed by Grupo Mexico, S.A. DE C.V. Pursuant to the terms of that promissory note, payments are due over eight years. All payments required to date have been made and \$50,000,000 of principal remains unpaid. It is the position of the United States that the res of this Trust is not property of the bankruptcy estate. However, should it ever be determined that the res of that Trust is property of the estate then the United States is a secured creditor as to that promissory note and guarantee.
- (F) IRS refund, see U.S. Initial Proof of Claim;
- (G) Any disputed past cost amounts held in escrow by ASARCO pending dispute resolution, and
- (H) Any insurance proceeds received by ASARCO on account of environmental liability to the United States.

#### **MISCELLANEOUS**

206. This Supplemental Proof of Claim reflects certain known liabilities of ASARCO to the United States. The United States reserves the right to amend this Supplemental Proof of Claim to assert subsequently discovered liabilities. The United States also reserves the right to amend this Supplemental Proof of Claim to update response costs or other information relating to the Sites included herein. This Supplemental Proof of Claim is without prejudice to any right



under 11 U.S.C. § 553 to set off, against this claim, debts owed (if any) to the debtor by this or any other federal agency.

207. The above cost estimates for future response actions assume that ASARCO or other potentially responsible parties shall perform the required response actions. If EPA performs such response actions it will incur costs - including but not limited to, its indirect costs - significantly in excess of those estimated above. This Supplemental Proof of Claim is asserted as a contingent unliquidated claim for such costs.

208. As to costs already incurred, identified above, where the United States has alleged interest has accumulated under 42 U.S.C. § 9607(a) through a certain date, the United States is entitled to recover ongoing interest from the dates identified for each such site.

209. This Supplemental Proof of Claim is filed as a general unsecured claim except to the extent provided in Paragraph 205 (Secured Claims) and to the extent administrative expense priority exists relating to property of the estate, post-petition violations of law, or otherwise. The United States will file any application for administrative expense priority at the appropriate time. The United States' position with respect to injunctive, compliance, regulatory, and work obligations that are not claims under 11 U.S.C. § 101(5) is set forth in Paragraph 61 supra.

210. Except as stated in this Supplemental Proof of Claim, no judgments against ASARCO have been rendered on this Supplemental Proof of Claim.

211. Except as stated in this Supplemental Proof of Claim, no payments have been made by ASARCO on this Supplemental Proof of Claim. The United States will amend this Supplemental Proof of Claim in the future to reflect any payments received from other responsible parties or the ASARCO Environmental Trust.

212. This Supplemental Proof of Claim is also filed to the extent necessary to protect

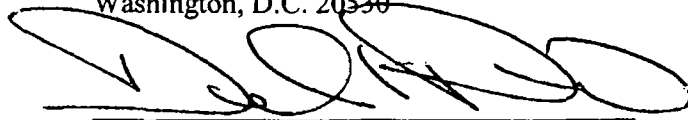
the United States' rights relating to any insurance proceeds received by ASARCO relating to sites discussed herein and any funds being held in escrow by ASARCO relating to the sites discussed herein.

213. Additional documentation in support of this Supplemental Proof of Claim is too voluminous to attach and is available upon request.

Respectfully submitted,



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